



FH
[REDACTED]

**STATE OF WISCONSIN
Division of Hearings and Appeals**

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

MPA/173385

PRELIMINARY RECITALS

Pursuant to a petition filed April 02, 2016, under Wis. Stat. § 49.45(5), and Wis. Admin. Code § HA 3.03(1), to review a decision by the Division of Health Care Access and Accountability (the “agency”) in regard to Medical Assistance (MA), a telephonic hearing was held on April 28, 2016, from Milwaukee, Wisconsin.

The issue for determination is whether the agency correctly denied a prior authorization (PA) request for personal care worker (PCW) hours for assistance with petitioner’s service dog.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED]
[REDACTED]
[REDACTED]

||

Respondent:

Department of Health Services
1 West Wilson Street, Room 651
Madison, Wisconsin 53703

By: [REDACTED], RN

Division of Health Care Access and Accountability
1 West Wilson Street, Room 272
P.O. Box 309
Madison, WI 53707-0309

ADMINISTRATIVE LAW JUDGE:

Kelly Cochrane
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Outagamie County.

2. On January 25, 2016 petitioner's PCW provider submitted a PA Amendment Request to the agency requesting up to 22 hours of PCW assistance with petitioner's service dog.
3. On March 3, 2016 the agency issued a notice to petitioner stating that it was denying the PA Amendment Request because assistance with petitioner's service dog was not a covered service in the personal care program.

DISCUSSION

MA coverage of PCW services is described in Wis. Adm. Code, §DHS 107.112. Covered services are specified in subsection (1), and are defined generally as "medically oriented activities related to assisting a recipient with activities of daily living necessary to maintain the recipient in his or her place of residence in the community." The PCW services that MA covers include:

1. Assistance with bathing;
2. Assistance with getting in and out of bed;
3. Teeth, mouth, denture and hair care;
4. Assistance with mobility and ambulation including use of walker, cane or crutches;
5. Changing the recipient's bed and laundering the bed linens and the recipient's personal clothing;
6. Skin care excluding wound care;
7. Care of eyeglasses and hearing aids;
8. Assistance with dressing and undressing;
9. Toileting, including use and care of bedpan, urinal, commode or toilet;
10. Light cleaning in essential areas of the home used during personal care service activities;
11. Meal preparation, food purchasing and meal serving;
12. Simple transfers including bed to chair or wheelchair and reverse; and
13. Accompanying the recipient to obtain medical diagnosis and treatment.

Wis. Adm. Code §DHS 107.112(1)(b).

Other PCW services which can be covered by MA include:

(2) COVERED SERVICES. Services provided by an agency certified under s. [DHS 105.16](#) which are covered by MA are those reasonable and medically necessary services required in the home to treat the recipient's condition. Covered services are: skilled nursing services, home health aide services and medical supplies, equipment and appliances suitable for use in the recipient's home, and therapy and speech pathology services which the agency is certified to provide. These services are covered only when performed according to the requirements of s. [DHS 105.16](#) and provided in a recipient's place of residence which is other than a hospital or nursing home. Home health skilled nursing and therapy services are covered only when provided to a recipient who, as certified in writing by the recipient's physician, is confined to a place of residence except that intermittent, medically necessary, skilled nursing or therapy services are covered if they are required by a recipient who cannot reasonably obtain these services outside the residence or from a more appropriate provider. Home health aide services may be provided to a recipient who is not confined to the home, but services shall be performed only in the recipient's home. Services are covered only when included in the written plan of care with supervision and coordination of all nursing care for the recipient provided by a registered nurse. Home health services include:

(a) Skilled nursing services provided in a recipient's home under a plan of care which requires less than 8 hours of skilled nursing care per calendar day and specifies a level of care which the nurse is qualified to provide. These are:

1. Nursing services performed by a registered nurse, or by a licensed practical nurse under the supervision of a registered nurse, according to the written plan of care and accepted standards of medical and nursing practice, in accordance with ch. N 6;
2. Services which, due to the recipient's medical condition, may be only safely and effectively provided by an RN or LPN;
3. Assessments performed only by a registered nurse; and
4. Teaching and training of the recipient, the recipient's family or other caregivers requiring the skills on an RN or LPN.

Note: For a further description of skilled nursing services, refer to the Wisconsin Medical Assistance Home Health Agency Provider Handbook.

(b) Home health aide services are:

1. Medically oriented tasks which cannot be safely delegated by an RN as determined and documented by the RN to a personal care worker who has not received special training in performing tasks for the specific individual, and which may include, but are not limited to, medically oriented activities directly supportive of skilled nursing services provided to the recipient. These may include assistance with and administration of oral, rectal and topical medications ordinarily self-administered and supervised by an RN according to 42 CFR 483.36 (d), chs. DHS 133 and N 6, and assistance with activities directly supportive of current and active skilled therapy and speech pathology services and further described in the Wisconsin medical assistance home health agency provider handbook;
2. Assistance with the recipient's activities of daily living only when provided on conjunction with a medically oriented task that cannot be safely delegated to a personal care worker as determined and documented by the delegating RN. Assistance with the recipient's activities of daily living consists of medically oriented tasks when a reasonable probability exists that the recipient's medical condition will worsen during the period when assistance is provided, as documented by the delegating RN. A recipient whose medical condition has exacerbated during care activities sometime in the past 6 months is considered to have a condition which may worsen when assistance is provided. Activities of daily living include, but are not limited to, bathing, dressing, grooming and personal hygiene activities, skin, foot and ear care, eating, elimination, ambulation, and changing bed positions; and
3. Household tasks incidental to direct care activities described in subds. 1. and 2.

Note: For further description of home health aide services, refer to the Wisconsin Medical Assistance Home Health Agency Provider Handbook.

(c)

1. These are services provided in the recipient's home which can only be safely and effectively performed by a skilled therapist or speech pathologist or by a certified therapy assistant who receives supervision by the certified therapist according to 42 CFR 484.32 for a recipient confined to his or her home.
2. Based on the assessment by the recipient's physician of the recipient's rehabilitation potential, services provided are expected to materially improve the recipient's condition within a reasonable, predictable time period, or are necessary to establish a safe and effective maintenance program for the recipient.
3. In conjunction with the written plan of care, a therapy evaluation shall be conducted prior to the provision of these services by the therapist or speech pathologist who will provide the services to the recipient.

4. The therapist or speech pathologist shall provide a summary of activities, including goals and outcomes, to the physician at least every 62 days, and upon conclusion of therapy services.

Wis. Adm. Code §DHS 107.11(2).

Some services and equipment are never covered by the MA program. See Wis. Adm. Code §DHS 107.03 & 107.112(4). The agency's position is that the PCW service for assistance with the service dog is a noncovered service because it is not listed as a covered PCW service per Wis. Adm. Code §DHS 107.112(4)(f). The agency also asserts that it has specifically stated that service animals are a non-covered service, as they are not primarily medical in nature. See *Medicaid and BadgerCare Update No. 2004-75*, dated September, 2004; Exhibit 1, attachment 4. The agency also denied the request because for MA purposes, service dogs are considered a supportive home care service, which would be covered under waiver programs, like IRIS, of which petitioner is a member.

The petitioner described needing assistance with physical assistance for the necessary of her service dog: attaching the outdoor tether to its collar, holding a food dish so petitioner may put food in its bowl, filling the water dish, attaching the leash to her wheelchair for public outings, etc. The petitioner's mother described at hearing that the PCW provider was not looking for 22 additional units of PCW time, but rather *permission* to utilize the PCW hours petitioner already has been awarded to assist petitioner with her service dog. However, in either case, the petitioner is looking to have MA authorize PCW time for assistance with the service dog, which would result in MA being billed by the PCW for said service. PCW providers may only bill MA for services that meet program requirements and only for direct care or travel, even if the PA allows for additional time. See MA Handbook, Personal Care, Topic #2457, available online at [https://www.forwardhealth.wi.gov/WIPortal/Subsystem/KW/Display.aspx?ia=1&p=1&sa=47&s=3&c=55&nt=Reimbursement Not Guaranteed&adv=Y](https://www.forwardhealth.wi.gov/WIPortal/Subsystem/KW/Display.aspx?ia=1&p=1&sa=47&s=3&c=55&nt=Reimbursement%20Not%20Guaranteed&adv=Y).

The MA covered PCW services have been specifically outlined under the regulations. Assistance with a service dog is not a listed service in the regulations. Accordingly, it is not covered by MA under Wis. Adm. Code §DHS 107.112(4)(f). The agency reaffirmed this as a service that it does not cover through the *Medicaid and BadgerCare Update No. 2004-75*.

I understand that requesting the waiver program to fund this service may seem bureaucratic and may even be inconvenient for the petitioner. Unfortunately, I lack the equitable powers to grant the relief sought. See *Oneida County v. Converse*, 180 Wis.2d 120, 125, 508 N.W.2d 416 (1993). In other words, administrative law judges do have the power to address issues of fairness. We are required to apply the law as written. As such, I must uphold the denial.

CONCLUSIONS OF LAW

The agency correctly denied a PA request for PCW hours for assistance with petitioner's service dog as it not a covered personal care service.

THEREFORE, it is

ORDERED

The petition for review herein is dismissed.

REQUEST FOR A REHEARING

You may request a rehearing if you think this decision is based on a serious mistake in the facts or the law or if you have found new evidence that would change the decision. Your request must be **received within 20 days after the date of this decision**. Late requests cannot be granted.

Send your request for rehearing in writing to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400 **and** to those identified in this decision as "PARTIES IN INTEREST." Your rehearing request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and explain why you did not have it at your first hearing. If your request does not explain these things, it will be denied.

The process for requesting a rehearing may be found at Wis. Stat. § 227.49. A copy of the statutes may be found online or at your local library or courthouse.

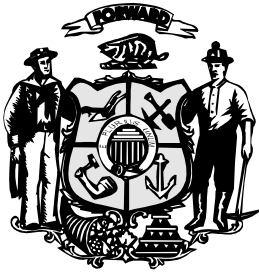
APPEAL TO COURT

You may also appeal this decision to Circuit Court in the county where you live. Appeals must be filed with the Court **and** served either personally or by certified mail on the Secretary of the Department of Health Services, 1 West Wilson Street, Room 651, Madison, Wisconsin 53703, **and** on those identified in this decision as "PARTIES IN INTEREST" **no more than 30 days after the date of this decision** or 30 days after a denial of a timely rehearing (if you request one).

The process for Circuit Court Appeals may be found at Wis. Stat. §§ 227.52 and 227.53. A copy of the statutes may be found online or at your local library or courthouse.

Given under my hand at the City of Milwaukee,
Wisconsin, this 8th day of June, 2016

\sKelly Cochrane
Administrative Law Judge
Division of Hearings and Appeals



State of Wisconsin\DIVISION OF HEARINGS AND APPEALS

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The preceding decision was sent to the following parties on June 8, 2016.

Division of Health Care Access and Accountability